

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

Status of Claims

Claims 1-31 were previously canceled without prejudice or disclaimer of the subject matter contained therein.

Claims 32-52 are currently pending in the application, of which claims 32, 35, 40, 43, and 46 are independent.

Claims 32-48 are rejected.

By virtue of the amendments above, claims 32, 35, 40, 43, 46, and 48 have been amended and new claims 49-52 have been added. Support for the amendments in claims 32, 35, 40, 43, 46 may be found in the specification, at least in paragraphs [0018] and [0028]. New claims 49-52 recite features similar to claim 48.

No new matter has been introduced by way of the amendments above. Entry thereof is therefore respectfully requested.

Summary of the Office Action

Claim 48 was objected to as being dependent upon a rejected base claim, but otherwise allowable.

Claims 32-48 were objected to because of minor informalities.

Claims 32, 33, 35, 36, 38-41, 43, 44, 46, and 47 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2002/0010767 to Farrow et al. (hereinafter “Farrow”) in view of U.S. Patent Application Publication No. 2003/0005100 to Barnard et al. (hereinafter “Barnard”), and further in view of Applicant’s Admitted Prior Art (hereinafter “AAPA”).

Claims 34, 37, 42 and 45 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Farrow and Barnard and AAPA, and in further view of what was well known in the art at the time of the invention.

The rejections above are respectfully traversed for at least the reasons set forth below.

Allowable Subject Matter

The indication that claim 48 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims is noted with appreciation. However, at this time, claim 48 has not been rewritten into independent form because independent claim 32, upon which claim 48 depends, is believed to be allowable over the cited documents of record for reasons set forth below. Thus, claim 48 is believed to be allowable as being dependent from allowable independent claim 32 and for containing allowable subject matter.

Claim Objections

The claims were objected to because, as indicated by the Examiner, terms “network topography” should be changed to “network topology” given the context of the specification.

In response, the terms “network topography” in independent claims 32, 35, 40, 43, and 46 have been amended above to “network topology.” Thus, the objection has been overcome. Withdrawal of the objection to the claims is therefore respectfully requested.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, “[a]ll claim limitations must be considered” because “all words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claims would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known

technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render the claims obvious and, thus, the claims are distinguishable over the cited reference(s).

- **Claims 32, 33, 35, 36, 38-41, 43, 44, 46 and 47:**

Claims 32, 33, 35, 36, 38-41, 43, 44, 46 and 47 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Farrow in view of Barnard, and further in view of AAPA. The rejection above is respectfully traversed for at least the following reasons.

- **Independent Claim 35:**

As amended, independent claim 35 recites, *inter alia*,

the discovery procedure for the particular network node, initiated by the discovery request from the network portion, including polling other nodes in the network to determine a network topology, the polled network topology including at least some of the other nodes to which the particular network node is connected, and to determine the configuration of the particular network node.
(Emphasis added)

In setting forth the rejection of claim 35, the Office Action correctly admits that Farrow in view of Bernard fails to teach or suggest the features “the discovery procedure further including polling other nodes in the network to determine a network topology, the polled network topology including at least some of the other nodes to which the particular network node is connected, and the configuration of the particular network node,” recited in independent claim 35 (See *Office Action*, page 6).

The Office Action then asserts that AAPA in paragraph [0002] of the present application discloses those features. *Id.* However, that assertion is respectfully traversed. In paragraph [0002] of the present application, the AAPA discloses a topology discovery product for discovering a network topology, wherein the topology discovery product includes a computer program which periodically polls each network element and gathers data indicative of the network element's health.

Because the topology discovery product of the AAPA periodically polls the network elements for their health data, the topology discovery product of the AAPA automatically polls the network elements at certain time intervals. Thus, the topology discovery product of the AAPA is not taught or suggested to be initiated by a discovery request from a portion of the network. In fact, paragraph [0006] of the present application discloses that the topology discovery of the AAPA is a “scheduled” discovery which is typically “carried out when the network load is low, i.e., during the night.” Thus, the discovery procedure of the topology discovery product of the AAPA is not initiated by a discovery request or in response to an access request from a particular node in the network. Therefore, the AAPA fails to teach or suggest “the discovery procedure for the particular network node, initiated by the discovery request from the network portion, including polling other nodes in the network to determine a

network topology, ... and to determine the configuration of the particular network node" as recited in independent claim 35.

As a result, even if assuming for the sake of argument that somehow one skilled in the art were motivated to utilize the topology discovery product disclosed by AAPA into Farrow in view of Barnard, the proposed combination of Farrow in view of Barnard and AAPA would still fail to yield a discovery procedure for the particular network node, initiated by the discovery request from the network portion, to poll other nodes in the network to determine a network topology and to determine the configuration of the particular network node, as recited in claim 35.

Furthermore, paragraph [0006] of the present application states,

A disadvantage of scheduled discovery which is performed by the NNM product is that the discovery procedure can negatively affect network performance when the discovery procedure is carried out. This is why the discovery schedule is typically set such that the discovery procedure is carried out when the network load is low, i.e., during the night. However, performing the discovery at predetermined time intervals has the disadvantage that network nodes which are connected to the network only temporarily can be missed by the discovery. In particular this applies to portable computers, such as lap top computers which are frequently connected and disconnected to the network by means of a docking station.

As such, paragraph [0006] of the present application describes the disadvantages of the scheduled discovery of the product of the AAPA. Thus, it should be noted that the features recited above in claim 35 overcome the downfalls of the AAPA, because the topology discovery recited in claim 35, which is initiated in response to the initial request from the node establishing a connection to the network, captures devices that are temporarily connected to the network and has less impact on network performance.

Note that the arguments above were presented in the previous Response. However, in the Office Action, the Examiner fails to respond to those arguments. Therefore, the Examiner is respectfully requested to respond to this argument or allow the claims.

For at least the foregoing reasons, independent claim 35 is *not* obvious in view of the proposed combination of Farrow in view of Barnard and AAPA. Therefore, withdrawal of the rejection of independent claim 35 and allowance of the claim is respectfully requested.

o Independent Claims 32, 40, 43, and 46:

Independent claims 32, 40, 43, and 46 recite features similar to those of independent claim 35 as discussed above. Thus, independent claims 32, 40, 43, and 46 are also believed to be allowable over the cited documents of record for at least the same reasons as set forth above in connection with independent claim 35. It is therefore respectfully requested that the rejection of independent claims 32, 40, 43, and 46 be withdrawn, and these claims be allowed.

o Dependent Claims 33, 36, 38, 39, 41, 44, and 47:

Claims 33, 36, 38, 39, 41, 44, and 47 are dependent from one of independent claims 32, 35, 40, 43, and 46. Thus, they are also believed to be allowable over the cited documents of record for at least the same reasons as set forth above in connection with independent claims 32, 35, 40, 43, and 46. It is therefore respectfully requested that the rejection of claims 33, 36, 38, 39, 41, 44, and 47 be withdrawn, and these dependent claims be allowed.

- **Claims 34, 37, 42 and 45:**

Claims 34, 37, 42 and 45 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Farrow and Barnard and AAPA, and further in view of what was well known in the art at the time of the invention.

Claims 34, 37, 42 and 45 are dependent from one of independent claims 32, 35, 40, and 43. Thus, they are believed to be allowable for at least the same reasons as set forth above in connection with independent claims 32, 35, 40, and 43. It is therefore requested that the rejection of claims 34, 37, 42 and 45 be withdrawn, and these claims be allowed.

New Claims 49-52

Claims 49-52 are dependent from one of independent claims 35, 40, 43, and 46, respectively. Thus, they are believed to be allowable for at least the same reasons as set forth above in connection with independent claims 32, 35, 43, and 46. In addition, claims 49-52 recites features similar to claim 48. Therefore, claims 49-52 are also believed to be allowable for at least the same reasons as claim 48.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited. Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

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